

AMENDED IN SENATE MAY 5, 2015  
AMENDED IN SENATE APRIL 20, 2015  
AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 119**

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**Introduced by Senator Hill**

January 14, 2015

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An act to add Section 7110.7 to the Business and Professions Code, to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.8, and 4216.9 of, and to add Sections 4216.10, 4216.11, 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.20, and 4216.21 to, the Government Code, and to amend Section 1702.5 of, and to add Section 320.5 to, the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Hill. Protection of subsurface installations.

Existing law vests the Contractors' State License Board with all functions and duties relating to the administration of the Contractors' State License Law. Existing law authorizes the issuance of licenses to applicants for contractors' licenses by written examination under rules and regulations adopted by the board.

This bill would require the board to adopt a program to enforce violations of provisions relating to excavation. The bill would authorize the board to require a contractor to undergo training, levy a fine, and suspend a contractor's license for a violation.

Existing law requires every operator of a subsurface installation, except the Department of Transportation, to become a member of, participate in, and share in the costs of, a regional notification center.

Existing law requires any person who plans to conduct any excavation to contact the appropriate regional notification center before commencing that excavation, as specified. Existing law defines a subsurface installation as any underground pipeline, conduit, duct, wire, or other structure. Existing law requires an operator of a subsurface installation, who receives notification of proposed excavation work, within 2 working days of that notification, excluding weekends and holidays, to mark the approximate location and number of subsurface installations that may be affected by the excavation or to advise that no subsurface installations operated by him or her would be affected. Existing law requires an operator of a subsurface installation that has failed to comply with these provisions to be liable to the excavator for damages, costs, and expenses.

This bill would declare the need to clarify and revise these provisions. The bill would define and redefine various terms relating to a regional notification center. The bill would expand the definition of a subsurface installation, to include an underground structure or submerged duct, pipeline, or structure, except as specified. This bill would also delete the exception for the Department of Transportation.

The bill would require an excavator planning to conduct an excavation to delineate the area to be excavated before notifying the appropriate regional notification center of the planned excavation, as provided. The bill would require an operator, before the legal start date and time of the excavation, to locate and field mark, within the area delineated for excavation, its subsurface installations. The bill would require an operator to maintain and preserve all plans and records for any subsurface installation owned by that operator as that information becomes known, as specified.

This bill would prohibit an excavator that damages a subsurface installation due to an inaccurate field mark, as defined, by an operator from being liable for damages, replacement costs, or other expenses arising from damage to the subsurface installation, provided that the excavator complied with the provisions described above. The bill would also ~~require, authorize, in any action for reimbursement or indemnification for a claim arising from damage to a subsurface installation in which the court or arbitrator~~ *a court* finds that the excavator complied with those provisions, the excavator to be awarded reasonable attorneys' fees and expenses.

The bill would delete the existing exemptions pertaining to an owner of real property and would instead exempt an owner of residential real

property who only uses hand tools for excavation work not requiring a permit on his or her residential real property that has no easement or ~~right-of-way~~. *right-of-way for a subsurface installation.*

Existing law authorizes the Occupational Safety and Health Standards Board to adopt and to publish occupational safety and health standards.

This bill would require the board, on or before January 1, 2017, to revise these provisions to clarify best practices to be used by excavators when excavating near subsurface installations. The bill would also require the board to convene an advisory committee hearing to seek input from operators, regional notification centers, labor, and excavators on best practices to be used for excavating in urban areas, the appropriate frequency of potholing, and other best practices developed by various industry associations.

The bill would also authorize the Public Utilities Commission and the Office of the State Fire Marshal to enforce the requirement to locate and field mark subsurface installations and lines against operators of natural gas and electric underground infrastructure and hazardous liquid pipelines, unless these operators are municipal utilities.

This bill would create the California Underground Facilities Safe Excavation Authority. The bill would require the authority to enforce laws relating to the protection of underground infrastructure by hearing complaints and assessing civil penalties for violations of these provisions.

The authority would be composed of 9 members who would serve 2-year terms. The bill would authorize the authority to use compliance audits and investigations in enforcing these provisions and furthering its purposes. The bill would require the authority, on or before January 1, 2017, and each year thereafter, to report to the Governor and the Legislature on its activities and any recommendations.

The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited into the fund are to be used to cover the administrative expenses of the authority, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

Existing law requires the Public Utilities Commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well

as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares the following:  
2     (a) Discussions that have taken place since Article 2  
3     (commencing with Section 4216) of Chapter 3.1 of Division 5 of  
4     Title 1 of the Government Code was added by Chapter 928 of the  
5     Statutes of 1989 have led to widespread agreement that many of  
6     the provisions of the article should be clarified.  
7     (b) Regional notification centers, or “one-call” centers, have  
8     developed means of electronic communication that improve the  
9     efficiency of the “one-call” process, and statutory barriers to using  
10    new methods of notification should be eliminated.  
11    (c) Electronic positive response is a means to communicate the  
12    status of responses to an excavator’s notice of excavation via the  
13    one-call center and provides the safety benefit that an excavator  
14    has an easy means to know whether or not all of the utilities within  
15    the excavation area have marked their underground facilities.  
16    (d) The delineation by an excavator of the area to be excavated  
17    in advance of the field location and marking by subsurface facility  
18    operators of their facilities aids the excavator in understanding  
19    where underground facilities were marked, and thus improves  
20    safety. This practice was recommended by the National  
21    Transportation Safety Board in its 1997 study “Protecting Public  
22    Safety through Excavation Damage Prevention” and is a best  
23    practice of the Common Ground Alliance.

1 (e) Continuing an excavation after an excavation “ticket” has  
2 expired does not promote safety, and excavators should renew  
3 their ticket with the one-call center before expiration. Continuing  
4 excavation when markings are no longer visible does not promote  
5 safety, and excavators should stop work until the subsurface  
6 installations are remarked.

7 (f) The benefits of eliminating old field marks once an  
8 excavation project is complete are more than just aesthetic;  
9 eliminating old field marks helps prevent confusion for the next  
10 excavator to dig in that area.

11 (g) Increased communication between subsurface installation  
12 operators and excavators before breaking ground has safety  
13 benefits.

14 (h) Construction sites often have many parties conducting  
15 different, ongoing work, and so the inherent safety risks associated  
16 with that work can be increased by a failure of these parties to  
17 effectively communicate. Excavators, operators of subsurface  
18 facilities, and locators have a responsibility to communicate with  
19 other parties before entering these worksites, which may require  
20 advance schedule coordination, and also have a responsibility to  
21 observe the safety requirements set for those worksites.

22 (i) Abandoned subsurface installations can be mistaken for  
23 active subsurface installations that are marked, and thus present a  
24 safety risk to excavators and the public. Safety will be improved  
25 if subsurface facility operators identify these subsurface  
26 installations when their existence is known.

27 (j) The ability of an operator of subsurface facilities to locate  
28 and mark affected facilities can be seriously impaired by a lack of  
29 high-quality records of those facilities, and thus operators should  
30 keep records of their facilities for as long as they are in the ground,  
31 whether or not they are in use.

32 (k) Failure by an operator of subsurface facilities to mark the  
33 facilities within the required two-working-day period is a serious  
34 breach of duty.

35 (l) While a utility operator has two working days after an  
36 excavator’s call to the one-call center to mark its underground  
37 facilities, failure of that utility to do so does not relieve the  
38 excavator of the safety responsibility to wait until the utility  
39 operator has marked before commencing excavation.

1 (m) Mismarks by an operator place excavators and the public  
2 at great safety risk, and so operators who mismark their facilities  
3 are entitled to no award for any damages to those facilities.

4 (n) Facilities that are embedded in pavement require more  
5 extensive communication to prevent them from being damaged.  
6 Excavators should not be liable for damage to traffic loops.

7 (o) Exemptions that allow a class of persons to excavate without  
8 calling 811 shall be made not based on convenience, but rather  
9 permitted only if alternative procedures allow the excavation to  
10 take place without compromising safety.

11 (p) The exemption that permits the Department of Transportation  
12 not to submit its maps to the regional notification center and not  
13 to mark its underground facilities within 48 hours does not have  
14 a basis in safety.

15 (q) The exemption that permits private property owners to dig  
16 on their property without calling a regional notification center to  
17 have the area marked for underground facilities does not have a  
18 basis in safety.

19 (r) The exemption that permits homeowners to conduct  
20 excavation on their property with heavy machinery or when there  
21 is a utility easement on his or her property does not have a basis  
22 in safety.

23 (s) Behaviors that are suspected to be unsafe, but upon which  
24 there is not widespread agreement as to the level of risk and,  
25 therefore, are unregulated, must be monitored to better assess the  
26 risk.

27 (t) Clarification is needed for excavators to understand best  
28 excavation practices, and this could be accomplished through  
29 clarification of the regulations on excavation by the Occupational  
30 Safety and Health Standards Board.

31 (u) Other states have experienced a dramatic improvement in  
32 safety after implementing centralized administrative enforcement  
33 of one-call laws.

34 (v) California should have a board, composed of excavation  
35 stakeholders, subject to oversight by the Legislature and the  
36 Department of Finance, to enforce the state's safe excavation laws  
37 through field audits, incident investigations, and administrative  
38 hearings, and to promote safe excavation practices. Due to the size  
39 of the state, and in order to reduce costs, the board should meet in  
40 northern and southern California.

(w) The board should not be funded through the General Fund, but should be funded by the community that will most directly benefit from the enforcement of the state's safe excavation laws, including the participants in the state's regional notification centers, and the board should also be funded by the fines it levies, instead of having those fines go to the General Fund.

(x) After a hearing before the board pursuant to the Administrative Procedures Act, a person found to be in violation of the state's safe excavation laws could meet a variety of sanctions including a fine not exceeding a specified amount and the requirement to undergo relevant education.

(y) To preserve due process, the superior court should be available to an aggrieved party as a forum in which to challenge a board decision.

(z) Most persons who would be subject to the board's oversight are also subject to the oversight of other enforcement agencies, and those agencies should also take steps to reduce the safety risks posed by violations of the state's safe excavation laws.

SEC. 2. Section 7110.7 is added to the Business and Professions Code, to read:

7110.7. (a) The Contractors' State License Board shall adopt a program to enforce violations of paragraph (1) of subdivision (a) of Section 4216.2 of the Government Code.

(b) The Contractors' State License Board shall require contractors to undergo training relating to compliance with paragraph (1) of subdivision (a) of Section 4216.2 of the Government Code, as determined by the board, for an initial violation.

(c) If the contractor does not attend training within two months of being notified of the requirement to do so, or fails to provide a reasonable explanation for his or her delay in scheduling that training in writing, the board shall, in addition, levy a fine.

(d) A subsequent violation within one calendar year of the first violation, failure to attend training, or failure to pay fines ultimately may result in suspension of the contractor's license.

(e) The board shall determine a graduated scale of fines considering the following factors:

(1) Whether the regional notification center received a timely request for locate and field mark.

(2) The gravity of the violation.

1 (3) The good faith of the contractor.

2 (4) The contractor's history of previous violations.

3 SEC. 3. Section 4216 of the Government Code is amended to  
4 read:

5 4216. As used in this article the following definitions apply:

6 (a) "Abandoned subsurface installation" means a subsurface  
7 installation that is no longer in service and is physically  
8 disconnected from any active or inactive subsurface installation.

9 (b) "Active subsurface installation" means a subsurface  
10 installation currently in use or currently carrying service.

11 (c) "Authority" means the California Underground Facilities  
12 Safe Excavation Authority.

13 (d) "Delineate" means to mark in white paint the location or  
14 path of the proposed excavation using the guidelines in Appendix  
15 B of the "Guidelines for Excavation Delineation" published in  
16 Best Practices Version 11.0 by the Common Ground Alliance. If  
17 there is a conflict between the marking practices in those guidelines  
18 and other provisions of this article, this article shall control.

19 (e) "Electronic positive response" means an electronic response  
20 from an operator to the regional notification center providing the  
21 status of an operator's statutorily required response to a ticket.

22 (f) (1) "Emergency" means a sudden, unexpected occurrence,  
23 involving a clear and imminent danger, demanding immediate  
24 action to prevent or mitigate loss of, or damage to, life, health,  
25 property, or essential public services.

26 (2) "Unexpected occurrence" includes, but is not limited to, a  
27 fire, flood, earthquake or other soil or geologic movement, riot,  
28 accident, damage to a subsurface installation requiring immediate  
29 repair, or sabotage.

30 (g) "Excavation" means penetration of the plane between the  
31 air and the existing surface of the ground or pavement by any  
32 operation in which earth, rock, or other material is moved,  
33 removed, or otherwise displaced by means of tools, equipment, or  
34 explosives in any of the following ways: grading, trenching,  
35 digging, ditching, drilling, augering, tunneling, scraping, cable or  
36 pipe plowing and driving, gouging, crushing, jack hammering,  
37 saw cutting, or any other way.

38 (h) Except as provided in Section 4216.8, "excavator" means  
39 any person, firm, contractor or subcontractor, owner, operator,



1 utility, association, corporation, partnership, business trust, public  
2 agency, or other entity that performs any excavation.

3 (i) “Hand tool” means a piece of equipment used for excavating  
4 that uses human power and is not powered by any motor, engine,  
5 hydraulic, or pneumatic device.

6 (j) “High priority subsurface installation” means high-pressure  
7 natural gas pipelines with normal operating pressures greater than  
8 415kPA gauge (60psig), petroleum pipelines, pressurized sewage  
9 pipelines, high-voltage electric supply lines, conductors, or cables  
10 that have a potential to ground of greater than or equal to 60kv, or  
11 hazardous materials pipelines that are potentially hazardous to  
12 workers or the public if damaged.

13 (k) “Inactive subsurface installation” means both of the  
14 following:

15 (1) The portion of an underground subsurface installation that  
16 is not in use but is still connected to the subsurface installation, or  
17 to any other subsurface installation, that is in use or still carries  
18 service.

19 (2) A new underground subsurface installation that has not been  
20 connected to any portion of an existing subsurface installation.

21 (l) “Legal excavation start date and time” means at least two  
22 working days, not including the date of notification, or up to 14  
23 calendar days from the date of notification, if so specified by the  
24 excavator.

25 (m) “Local agency” means a city, county, city and county,  
26 school district, or special district.

27 (n) (1) “Locate and field mark” means to indicate the existence  
28 of any owned or maintained subsurface installations by using the  
29 guidelines in Appendix B of the “Guidelines for Operator’s Facility  
30 Field Delineation” published in Best Practices Version 11.0 by the  
31 Common Ground Alliance and in conformance with the uniform  
32 color code of the American Public Works Association. If there is  
33 a conflict between the marking practices in the guidelines and this  
34 article, this article shall control.

35 (2) “Locate and field mark” does not require an indication of  
36 the depth.

37 (o) “Near miss” means an event in which damage did not occur,  
38 but a clear potential for damage was identified.

39 (p) “Operator” means any person, corporation, partnership,  
40 business trust, public agency, or other entity that owns, operates,

1 or maintains a subsurface installation. For purposes of Section  
2 4216.1, an “operator” does not include an owner of real property  
3 where subsurface facilities are exclusively located if they are used  
4 exclusively to furnish services on that property and the subsurface  
5 facilities are under the operation and control of that owner.

6 (q) “Pavement” means a manmade surface material that cannot  
7 be removed with a conventional hand tool.

8 (r) “Positive response” means the response from an operator  
9 directly to the excavator providing the status of an operator’s  
10 statutorily required response to a ticket.

11 (s) “Qualified person” means a person who completes a training  
12 program in accordance with the requirements of Section 1509 of  
13 Title 8 of the California Code of Regulations, Injury and Illness  
14 Prevention Program, that meets the minimum locators training  
15 guidelines and practices published in Best Practices Version 11.0  
16 by the Common Ground Alliance.

17 (t) “Regional notification center” means a nonprofit association  
18 or other organization of operators of subsurface installations that  
19 provides advance warning of excavations or other work close to  
20 existing subsurface installations, for the purpose of protecting  
21 those installations from damage, removal, relocation, or repair.

22 (u) “State agency” means every state agency, department,  
23 division, bureau, board, or commission.

24 (v) “Subsurface installation” means any underground or  
25 submerged duct, pipeline, or structure, including, but not limited  
26 to, a conduit, duct, line, pipe, wire, or other structure, except  
27 nonpressurized sewerlines, nonpressurized storm drains, or other  
28 nonpressurized drain lines.

29 (w) “Ticket” means an excavation location request issued a  
30 number by the regional notification center.

31 (x) “Tolerance zone” means 24 inches on either side of the field  
32 marking placed by the operator as follows:

33 (1) A single marking, assumed to be the centerline of the  
34 subsurface installation, 24 inches from either side of that marking.

35 (2) A single marking with the size of installation specified as  
36 24 inches plus one-half the specified size on either side from the  
37 single marking.

38 (3) Multiple markings that graphically show the width of the  
39 installation 24 inches from the marking that graphically show the  
40 outside surface of the subsurface installation on a horizontal plane.

1 (y) “Working day” for the purposes of determining excavation  
2 start date and time means a weekday Monday through Friday, from  
3 7:00 a.m. to 5:00 p.m., except for federal holidays and state  
4 holidays, as defined in Section 19853 of the Government Code.

5 SEC. 4. Section 4216.1 of the Government Code is amended  
6 to read:

7 4216.1. Every operator of a subsurface installation shall become  
8 a member of, participate in, and share in the costs of, a regional  
9 notification center. Operators of subsurface installations who are  
10 members of, participate in, and share in, the costs of a regional  
11 notification center, including, but not limited to, the Underground  
12 Service Alert—Northern California or the Underground Service  
13 Alert—Southern California are in compliance with this section  
14 and Section 4216.9.

15 SEC. 5. Section 4216.2 of the Government Code is amended  
16 to read:

17 4216.2. (a) Before notifying the appropriate regional  
18 notification center, an excavator planning to conduct an excavation  
19 shall delineate the area to be excavated. If the area is not delineated,  
20 an operator may, at the operator’s discretion, choose not to locate  
21 and field mark until the area to be excavated has been delineated.

22 (b) Except in an emergency, an excavator planning to conduct  
23 an excavation shall notify the appropriate regional notification  
24 center of the excavator’s intent to excavate at least two working  
25 days, and not more than 14 calendar days, before beginning that  
26 excavation. The date of the notification shall not count as part of  
27 the two-working-day notice. If an excavator gives less notice than  
28 the legal excavation start date and time and the excavation is not  
29 an emergency, the regional notification center will take the  
30 information and provide a ticket, but an operator has until the legal  
31 excavation start date and time to respond.

32 (c) When the excavation is proposed within 10 feet of a high  
33 priority subsurface installation, the operator of the high priority  
34 subsurface installation shall notify the excavator of the existence  
35 of the high priority subsurface installation prior to the legal  
36 excavation start date and time, and set up an onsite meeting at a  
37 mutually agreed upon time to determine actions or activities  
38 required to verify the location and prevent damage to the high  
39 priority subsurface installation. The excavator shall not begin  
40 excavating until after the completion of the onsite meeting.

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. Any temporary marking placed at the planned excavation location shall be clearly seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

(e) If an excavator gives less than the legal excavation start date and time and it is not an emergency, the regional notification center shall take the information and provide a ticket but an operator shall have until the legal excavation start date and time to respond.

(f) The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the excavator shall update the ticket either by accessing the center's Internet Web site or by calling "811" by the end of the 28th day.

(g) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

(h) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a positive response from all known subsurface installations within the delineated boundaries of the proposed area of excavation.

(i) If a site requires special access, an excavator shall request an operator to contact the excavator regarding that special access or give special instructions on the location request.

(j) If a ticket obtained by an excavator expires but work is ongoing, the excavator shall call into the regional notification

1 center and get a new ticket and wait a minimum of two working  
2 days, not including the date of call in, before restarting excavation.  
3 All excavation shall cease during the waiting period.

4 (k) When the excavation is complete, the excavator shall  
5 eliminate or camouflage any temporary markings that remain for  
6 45 days or more, unless a local ordinance indicates otherwise.

7 SEC. 6. Section 4216.3 of the Government Code is amended  
8 to read:

9 4216.3. (a) (1) (A) Unless the excavator and operator  
10 mutually agree to a later start date and time, or otherwise agree to  
11 the sequence and timeframe in which the operator will locate and  
12 field mark, an operator shall do one of the following before the  
13 legal excavation start date and time:

14 (i) Locate and field mark within the area delineated for  
15 excavation and, where multiple subsurface installations of the same  
16 type are known to exist together, mark the number of subsurface  
17 installations.

18 (ii) To the extent and degree of accuracy that the information  
19 is available, provide information to an excavator where the  
20 operator's active or inactive subsurface installations are located.

21 (iii) Advise the excavator it operates no subsurface installations  
22 in the area delineated for excavation.

23 (B) An operator shall mark newly installed subsurface  
24 installations in areas with continuing excavation activity.

25 (C) An operator shall indicate with an "A" inside a circle the  
26 presence of any abandoned subsurface installations within the  
27 delineated area. ~~There shall be no liability associated with marking~~  
28 ~~abandoned subsurface installations.~~ The markings are to make an  
29 excavator aware that there are abandoned subsurface installations  
30 within that delineated work area.

31 (2) Only a qualified person shall perform subsurface installation  
32 locating activities.

33 (3) A qualified person performing subsurface installation  
34 locating activities on behalf of an operator shall use a minimum  
35 of a single-frequency utility locating device and shall have access  
36 to alternative sources for verification, if necessary.

37 (4) An operator shall amend, update, maintain, and preserve all  
38 plans and records for its subsurface installations as that information  
39 becomes known. If there is a change in ownership of a subsurface  
40 installation, the records shall be turned over to the new operator

1 ~~who will assume full responsibility of the subsurface installation.~~  
2 *operator.* Records on abandoned subsurface installations shall be  
3 kept beginning on January 1, 2016.

4 (b) If the field marks are no longer reasonably visible, an  
5 excavator shall renotify the regional notification center with a  
6 request for remarks that can be for all or a portion of the  
7 excavation. Excavation shall cease in the area to be remarked. If  
8 the area to be remarked is not the full extent of the original  
9 excavation, the excavator shall delineate the portion to be remarked.  
10 If the delineation markings are no longer reasonably visible, the  
11 excavator shall redelineate the area to be remarked. If remarks are  
12 requested, the operator shall have two working days, not including  
13 the date of request, to remark the subsurface installation.  
14 Excavation shall cease in the area where the remarks are requested.  
15 If the area to be remarked is not the full extent of the original  
16 excavation, the excavator shall delineate the portion to be remarked  
17 and provide a description of the area requested to be remarked on  
18 the ticket. The excavator shall provide a description for the area  
19 to be remarked that falls within the area of the original location  
20 request.

21 (c) Every operator may supply an electronic positive response  
22 through the regional notification center before the legal excavation  
23 start date and time. The regional notification center shall make  
24 those responses available.

25 (d) The excavator shall notify the appropriate regional  
26 notification center of the failure of an operator to identify  
27 subsurface installations pursuant to subparagraph (A) or (B) of  
28 paragraph (1) of subdivision (a), or subdivision (b). The notification  
29 shall include the ticket issued by the regional notification center.  
30 A record of all notifications received pursuant to this subdivision  
31 shall be maintained by the regional notification center for a period  
32 of not less than three years. The record shall be available for  
33 inspection pursuant to subdivision (h) of Section 4216.2.

34 (e) If an operator or local agency knows that it has a subsurface  
35 installation embedded or partially embedded in the pavement that  
36 is not visible from the surface, the operator or local agency shall  
37 contact the excavator before pavement removal to communicate  
38 and determine a plan of action to protect that subsurface installation  
39 and excavator.

1     ~~(f) An excavator shall not be responsible for a traffic signal~~  
2     ~~detector loop, even if the excavator is notified that it is embedded~~  
3     ~~in the pavement, unless there is a local ordinance or permit~~  
4     ~~requirement to the contrary.~~

5     SEC. 7. Section 4216.4 of the Government Code is amended  
6     to read:

7     4216.4. (a) (1) Except as provided in paragraph (2), if an  
8     excavation is within the approximate location of a subsurface  
9     installation, the excavator shall expose with hand tools to the depth  
10    of the excavation within the tolerance zone, including any  
11    applicable clearance requirements, for the full length of the project.

12    (2) (A) An excavator may use a vacuum excavation device to  
13    expose subsurface installations within the tolerance zone if the  
14    operator has marked the subsurface installation, the excavator has  
15    contacted any operator whose subsurface installations may be in  
16    conflict with the excavation, and the operator has agreed to the  
17    use of a vacuum excavation device. An excavator shall inform the  
18    regional notification center of his or her intent to use a vacuum  
19    excavation device when obtaining a ticket.

20    (B) An excavator may use power-operated or boring equipment  
21    for the removal of any existing pavement only if there is no known  
22    subsurface installation contained in the pavement.

23    (b) If the exact location of the subsurface installation cannot be  
24    determined by hand excavating in accordance with subdivision  
25    (a), the excavator shall request the operator to provide additional  
26    information to the excavator, to the extent that information is  
27    available to the operator, to enable the excavator to determine the  
28    exact location of the installation. If the excavator has questions  
29    about the markings that an operator has placed, the excavator may  
30    contact the notification center to send a request to have the operator  
31    contact the excavator directly. The regional notification center  
32    shall provide the excavator with the contact telephone number of  
33    the subsurface installation operator.

34    (c) An excavator discovering or causing damage to a subsurface  
35    installation, including all breaks, leaks, nicks, dents, gouges,  
36    grooves, or other damage to subsurface installation lines, conduits,  
37    coatings, or cathodic protection, shall immediately notify the  
38    subsurface installation operator. The excavator may contact the  
39    regional notification center to obtain the contact information of  
40    the subsurface installation operator. If high priority subsurface

1 installations are damaged and the operator cannot be contacted  
2 immediately, the excavator shall call 911 emergency services.

3 (d) Each excavator, operator, or locator shall communicate with  
4 each other and respect the appropriate safety requirements and  
5 ongoing activities of the other parties, if known, at an excavation  
6 site.

7 SEC. 8. Section 4216.5 of the Government Code is amended  
8 to read:

9 4216.5. The requirements of this article apply to state agencies  
10 and to local agencies that own or operate subsurface installations.  
11 A local agency that is required to provide the services described  
12 in Section 4216.3 may charge a fee in an amount sufficient to cover  
13 the cost of providing that service.

14 SEC. 9. Section 4216.6 of the Government Code is amended  
15 to read:

16 4216.6. (a) (1) Any operator or excavator who negligently  
17 violates this article is subject to a civil penalty in an amount not  
18 to exceed ten thousand dollars (\$10,000).

19 (2) Any operator or excavator who knowingly and willfully  
20 violates any of the provisions of this article is subject to a civil  
21 penalty in an amount not to exceed fifty thousand dollars (\$50,000).

22 (3) Except as otherwise specifically provided in this article, this  
23 section is not intended to affect any civil remedies otherwise  
24 provided by law for personal injury or for property damage,  
25 including any damage to subsurface installations, nor is this section  
26 intended to create any new civil remedies for those injuries or that  
27 damage.

28 (4) This article shall not be construed to limit any other provision  
29 of law granting governmental immunity to state or local agencies  
30 or to impose any liability or duty of care not otherwise imposed  
31 by law upon any state or local agency.

32 (b) An action may be brought by the Attorney General, the  
33 district attorney, or the local or state agency that issued the permit  
34 to excavate, for the enforcement of the civil penalty pursuant to  
35 this section either in a civil action brought in the name of the people  
36 of the State of California or in an administrative hearing before  
37 the authority pursuant to Section 4216.19. If penalties are collected  
38 as a result of a civil suit brought by a state or local agency for  
39 collection of those civil penalties, the penalties imposed shall be  
40 paid to the general fund of the agency. If more than one agency is



involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting these fees.

(c) The requirements of this article may also be enforced as follows:

(1) The Contractors' State License Board shall enforce paragraph (1) of subdivision (a) of Section 4216.2 as specified in Section 7110.7 of the Business and Professions Code.

(2) The Public Utilities Commission may enforce subdivisions (a) and (b) of Section 4216.3 against operators of natural gas and electric underground infrastructure, unless those operators are municipal utilities.

(3) The Office of the State Fire Marshal may enforce subdivisions (a) and (b) of Section 4216.3 against operators of hazardous liquid pipelines, unless those operators are municipal utilities.

(d) Statewide information provided by operators and excavators regarding facility events shall be compiled and made available in an annual report by regional notification centers and posted on the Internet Web sites of the regional notification centers.

(e) For purposes of subdivision (d), the following terms have the following meanings:

(1) "Facility event" means the occurrence of excavator downtime, damages, near misses, and violations.

(2) "Statewide information" means information submitted by operators and excavators using the California Regional Common Ground Alliance's Virtual Private Damage Information Reporting Tool. Supplied data shall comply with the Damage Information Reporting Tool's minimum essential information as listed in Best Practices Version 11.0 by the Common Ground Alliance.

SEC. 10. Section 4216.7 of the Government Code is amended to read:

4216.7. (a) If a subsurface installation is damaged by an excavator as a result of failing to comply with Section 4216.2 or 4216.4, or as a result of failing to comply with the operator's requests to protect the subsurface installation as specified by the operator before the start of excavation, the excavator shall be liable to the operator of the subsurface installation for resulting damages,

1 costs, and expenses to the extent the damages, costs, and expenses  
2 were proximately caused by the excavator's failure to comply.

3 (b) If an operator has failed to become a member of, participate  
4 in, or share in the costs of, a regional notification center, that  
5 operator shall forfeit his or her claim for damages to his or her  
6 subsurface installation arising from an excavation against an  
7 excavator who has ~~called at least two working days in advance~~  
8 *complied with this article* to the extent damages were proximately  
9 caused by the operator's failure to ~~be a member~~. *comply with this*  
10 *article*.

11 (c) If an operator of a subsurface installation has failed to  
12 comply with the provisions of Section 4216.3, including, but not  
13 limited to, the requirement to field mark the appropriate location  
14 of subsurface installations within two working days of notification,  
15 has failed to comply with paragraph (2) of subdivision (a) of  
16 Section 4216.2, or has failed to comply with subdivision (b) of  
17 Section 4216.4, the operator shall be liable to the excavator who  
18 has complied with Sections 4216.2 and 4216.4 for damages,  
19 including liquidated damages, liability, losses, costs, and expenses  
20 resulting from the operator's failure to comply with these specified  
21 requirements to the extent the damages, costs, and expenses were  
22 proximately caused by the operator's failure to comply.

23 (d) An excavator who damages a subsurface installation due to  
24 an inaccurate field mark by an operator, or by a third party under  
25 contract to perform field marking for the operator, shall not be  
26 liable for damages, replacement costs, or other expenses arising  
27 from damages to the subsurface installation if the excavator  
28 complied with Sections 4216.2 and 4216.4.

29 *This section is not intended to create any presumption or to*  
30 *affect the burden of proof in any action for personal injuries or*  
31 *property damage, other than damage to the subsurface installation,*  
32 *nor is this section intended to affect, create, or eliminate any*  
33 *remedy for personal injury or property damage, other than damage*  
34 *to the subsurface installation.*

35 (e) In any actions for reimbursement or indemnification for a  
36 claim arising from damage to a subsurface installation in which  
37 ~~the court or arbitrator~~ *a court* finds that the excavator complied  
38 with the requirements ~~for Sections 4216.2 and 4216.4,~~ *of this article,* the excavator may be awarded  
39 ~~the excavator shall~~ reasonable attorney's fees and expenses.  
40

(f) For the purposes of this section, “inaccurate field mark” means a mark, or set of markings, made pursuant to Section 4216.3, that did not correctly indicate the approximate location of a subsurface installation affected by an excavation and includes the actual physical location of a subsurface installation affected by an excavation that should have been marked pursuant to Section 4216.3 but was not.

(g) Nothing in this section shall be construed to do any of the following:

(1) Affect claims including, but not limited to, third-party claims brought against the excavator or operator by other parties for damages arising from the excavation.

(2) Exempt the excavator or operator from his or her duty to mitigate any damages as required by common or other applicable law.

(3) Exempt the excavator or operator from liability to each other or third parties based on equitable indemnity or comparative or contributory negligence.

SEC. 11. Section 4216.8 of the Government Code is amended to read:

4216.8. This article does not apply to either of the following persons:

(a) An owner of residential real property doing work not requiring a permit issued by a state or local agency on his or her residential real property that has no easement or right-of-way *for a subsurface installation* who only uses hand tools for excavation.

(b) Any person or private entity that leases or rents power operated or power-driven excavating or boring equipment, regardless of whether an equipment operator is provided for that piece of equipment or not, to a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, if the signed rental agreement between the person or private entity and the contractor or subcontractor contains the following provision:

“It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract, the lessee or renter accepts all

1 liabilities and responsibilities contained in the regional  
2 notification center law.”

3  
4 SEC. 12. Section 4216.9 of the Government Code is amended  
5 to read:

6 4216.9. (a) A permit to excavate issued by any local agency,  
7 as defined in Section 4216, or any state agency, shall not be valid  
8 unless the applicant has been provided an initial ticket by a regional  
9 notification center pursuant to Section 4216.2. For purposes of  
10 this section, “state agency” means every state agency, department,  
11 division, bureau, board, or commission, including the Department  
12 of Transportation.

13 (b) This article does not exempt any person or corporation from  
14 Sections 7951, 7952, and 7953 of the Public Utilities Code.

15 SEC. 13. Section 4216.10 is added to the Government Code,  
16 to read:

17 4216.10. (a) On or before January 1, 2017, the Occupational  
18 Safety and Health Standards Board shall revise subdivision (b) of  
19 Section 1541 of Title 8 of the California Code of Regulations to  
20 clarify best practices to be used by excavators when excavating  
21 near subsurface installations.

22 (b) The board shall convene an advisory committee hearing to  
23 seek input from operators, regional notification centers, labor, and  
24 excavators on best practices to be used by excavators when  
25 excavating in urban areas where there is a high density of  
26 subsurface installations, the appropriate frequency of potholing,  
27 and other best practices developed by various industry associations,  
28 including the Common Ground Alliance.

29 SEC. 14. Section 4216.11 is added to the Government Code,  
30 to read:

31 4216.11. (a) The California Underground Facilities Safe  
32 Excavation Authority is hereby created.

33 (b) The authority shall enforce this article and further its  
34 purposes, and thus has the same powers as are conferred upon  
35 heads of departments of the state by Article 1 (commencing with  
36 Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 in  
37 the Government Code. Notwithstanding Section 11152, the  
38 authority shall not adopt rules or regulations.

39 (c) The authority may hold hearings and conduct any  
40 investigations necessary to carry out its powers and duties

1 prescribed by this article and, for those purposes, has the same  
2 powers as are conferred upon heads of departments of the state by  
3 Article 2 (commencing with Section 11180) of Chapter 2 of Part  
4 1 of Division 3 of Title 2.

5 SEC. 15. Section 4216.12 is added to the Government Code,  
6 to read:

7 4216.12. (a) The authority shall be composed of nine members,  
8 of which seven shall be appointed by the Governor, one shall be  
9 appointed by the Speaker of the Assembly, and one shall be  
10 appointed by the Senate Committee on Rules.

11 (b) The seven members appointed by the Governor shall be  
12 appointed, as follows:

13 (1) Three members shall have knowledge and expertise in  
14 managing underground. Of those three members, one shall have  
15 knowledge and expertise in managing the underground institutions  
16 of a municipal utility.

17 (2) Two members shall have knowledge and expertise in contract  
18 excavation.

19 (3) One member shall have knowledge and expertise in  
20 subsurface installation location and marking.

21 (4) One member shall have knowledge and expertise in operating  
22 a regional notification center.

23 (c) The member appointed by the Speaker of the Assembly shall  
24 have knowledge and expertise in representing in safety matters  
25 the workers employed by contract excavators.

26 (d) The member appointed by the Senate Committee on Rules  
27 shall have knowledge and expertise in managing the underground  
28 installations on one's own property, and may be drawn from  
29 agricultural, commercial, or residential, or other, property sectors.

30 SEC. 16. Section 4216.13 is added to the Government Code,  
31 to read:

32 4216.13. (a) The term of a member of the authority is two  
33 years. Of the first members of the authority, four members,  
34 determined by lot, shall serve for one year so that the terms of the  
35 members shall be staggered.

36 (b) A member shall not be appointed for more than two  
37 consecutive full terms.

38 (c) To the extent possible, the Governor shall fill any vacancy  
39 in the membership of the authority within 60 days after the vacancy  
40 occurs.

1 (d) Upon the recommendation of the authority, the Governor  
2 may remove a member appointed by the Governor for  
3 incompetence or misconduct.

4 SEC. 17. Section 4216.14 is added to the Government Code,  
5 to read:

6 4216.14. (a) The authority shall select a chairperson from  
7 among its members at the first meeting of each calendar year or  
8 when a vacancy in the chair exists.

9 (b) Subject to subdivision (c), the manner in which the  
10 chairperson is selected and the chairperson's term of office shall  
11 be determined by the authority.

12 (c) A member of the authority shall not serve more than two  
13 consecutive years as the chairperson of the authority.

14 SEC. 18. Section 4216.15 is added to the Government Code,  
15 to read:

16 4216.15. The authority shall meet at least once every three  
17 months. The authority shall hold meetings in Sacramento and Los  
18 Angeles, and in other locations in the state it deems necessary.

19 SEC. 19. Section 4216.16 is added to the Government Code,  
20 to read:

21 4216.16. (a) In addition to other powers specified in this article,  
22 the authority may do any of the following:

23 (1) Apply for and accepts grants, contributions, and  
24 appropriations, and award grants consistent with the goals and  
25 objectives of a program or activity the authority is authorized to  
26 implement or administer.

27 (2) Contract for professional services if the work or services  
28 cannot be satisfactorily performed by its employees or by any other  
29 state agency.

30 (3) Sue and be sued.

31 (4) Request and utilize the advice and services of all federal,  
32 state, local, and regional agencies.

33 (5) Conduct public education and outreach programs consistent  
34 with this article, promote the development of safety procedures  
35 for excavation and demolition projects constructed in the area of  
36 underground facilities, or make grants to local governments or  
37 private entities to do so.

38 (b) Notwithstanding Section 11152, the authority shall not adopt  
39 rules or regulations.

1 SEC. 20. Section 4216.17 is added to the Government Code,  
2 to read:

3 4216.17. The authority may obtain funding for its operational  
4 expenses from:

5 (a) A federal or state grant.

6 (b) A fee charged to members of the regional notification centers  
7 not to exceed the reasonable regulatory cost incident to enforcement  
8 of this article.

9 (c) A fine assessed pursuant to Section 4216.19.

10 (d) A filing or administrative fee to hear a complaint pursuant  
11 to Section 4216.19.

12 (e) Any other source.

13 SEC. 21. Section 4216.18 is added to the Government Code,  
14 to read:

15 4216.18. In the enforcement of this article, and furtherance of  
16 its purposes, the authority may authorize staff to use compliance  
17 audits, including field audits, and investigations of incidents and  
18 near-misses.

19 SEC. 22. Section 4216.19 is added to the Government Code,  
20 to read:

21 4216.19. (a) After providing opportunity for hearing pursuant  
22 to the administrative adjudication provisions of the Administrative  
23 Procedure Act (Chapter 4.5 (commencing with Section 11400) of  
24 Part 1 of Division 3 of Title 2), the authority, upon making a  
25 finding of violation, may:

26 (1) Assess a civil penalty of no more than \_\_\_\_ dollars (\$\_\_\_\_).

27 (2) Reach a settlement in lieu of assessing a civil penalty.

28 (3) Require remedial education relevant to the violation.

29 (b) The authority may do both of the following:

30 (1) Use the services of a third party to collect civil penalties.

31 (2) If the authority determines that an individual cannot afford  
32 to pay a penalty imposed pursuant to this section, the authority  
33 may exempt the individual from payment of the penalty in whole  
34 or in part.

35 SEC. 23. Section 4216.20 is added to the Government Code,  
36 to read:

37 4216.20. (a) A person aggrieved by a decision of the authority  
38 may, within 30 days after receiving the decision, request judicial  
39 review of the decision in superior court.

(b) In accordance with the judicial review and appeals process under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 1140), and Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2), the court shall hear and determine all matters connected with the decision of the authority for which judicial review is requested.

~~(e) (1) Except as provided in paragraph (2), the cost of the judicial review, including the cost of preparing a record and transcript, shall be paid by the party filing the request for judicial review.~~

~~(2) If the party filing the request for judicial review prevails, the court may require that the cost of the judicial review, including the cost of preparing a record and transcript, be paid by the authority, unless the authority waives the award of attorney's fees.~~

SEC. 24. Section 4216.21 is added to the Government Code, to read:

4216.21. (a) Notwithstanding Section 10231.5, the authority shall report to the Governor and the Legislature on or before January 1, 2017, and each year thereafter, on the activities of the authority and any recommendations of the authority.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

SEC. 25. Section 320.5 is added to the Public Utilities Code, to read:

320.5. (a) The Safe Energy Infrastructure and Excavation Fund is hereby established in the State Treasury. Moneys deposited into the fund shall be used to cover the administrative expenses of the California Underground Facilities Safe Excavation Authority, upon appropriation by the Legislature.

(b) Any excess moneys in the fund that are not necessary for the administrative expenses of the California Underground Facilities Safe Excavation Authority may, upon appropriation by the Legislature, be apportioned by the commission for the following purposes:

(1) The California Underground Facilities Safe Excavation Authority, for the purpose of the education and training of persons who violate Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code.

(2) Regional notification centers, as defined in Section 4216 of the Government Code, to cover the cost of public education and



1 outreach programs designed to promote excavation safety around  
2 underground facilities.

3 (3) The commission, to further a workforce development  
4 program, which shall be consistent with its equal employment  
5 opportunity program, that recruits and trains safety staff to perform  
6 the highest quality gas and electric utility inspections, audits,  
7 accident investigations, and data tracking and analysis. The  
8 commission may only apportion moneys for this purpose upon  
9 commission approval of the workforce development program at a  
10 meeting of the commission.

11 SEC. 26. Section 1702.5 of the Public Utilities Code is  
12 amended to read:

13 1702.5. (a) The commission shall, in an existing or new  
14 proceeding, develop and implement a safety enforcement program  
15 applicable to gas corporations and electrical corporations that  
16 includes procedures for monitoring, data tracking and analysis,  
17 and investigations, as well as issuance of citations by commission  
18 staff, under the direction of the executive director. The enforcement  
19 program shall be designed to improve gas and electrical system  
20 safety through the enforcement of applicable law, or order or rule  
21 of the commission related to safety using a variety of enforcement  
22 mechanisms, including the issuance of corrective actions, orders,  
23 and citations by designated commission staff, and recommendations  
24 for action made to the commission by designated commission staff.

25 (1) When considering the issuance of citations and assessment  
26 of penalties, the commission staff shall take into account voluntary  
27 reporting of potential violations, voluntary removal or resolution  
28 efforts undertaken, the prior history of violations, the gravity of  
29 the violation, and the degree of culpability.

30 (2) The procedures shall include, but are not limited to,  
31 providing notice of violation within a reasonable period of time  
32 after the discovery of the violation.

33 (3) The commission shall adopt an administrative limit on the  
34 amount of monetary penalty that may be set by commission staff.

35 (b) The commission shall develop and implement an appeals  
36 process to govern the issuance and appeal of citations or resolution  
37 of corrective action orders issued by the commission staff. The  
38 appeals process shall provide the respondent a reasonable period  
39 of time, upon receiving a citation, to file a notice of appeal, shall

1 afford an opportunity for a hearing, and shall require the hearing  
2 officer to expeditiously provide a draft disposition.

3 (c) The commission shall, within a reasonable time set by the  
4 commission, conclude a safety enforcement action with a finding  
5 of violation, a corrective action order, a citation, a determination  
6 of no violation, approval of the corrective actions undertaken by  
7 the gas corporation or electrical corporation, or other action. The  
8 commission may institute a formal proceeding regarding the alleged  
9 violation, potentially resulting in additional enforcement action,  
10 regardless of any enforcement action taken at the commission staff  
11 level.

12 (d) The commission shall implement the safety enforcement  
13 program for gas safety by July 1, 2014, and implement the safety  
14 enforcement program for electrical safety no later than January 1,  
15 2015.

16 (e) This section does not apply to an exempt wholesale  
17 generator, a qualifying small power producer, or qualifying  
18 cogenerator, as defined in Section 796 of Title 16 of the United  
19 States Code and the regulations enacted pursuant thereto. Nothing  
20 in this section affects the commission's authority pursuant to  
21 Section 761.3.

22 (f) Moneys collected as a result of the issuance of citations  
23 pursuant to this section shall be deposited in the Safe Energy  
24 Infrastructure and Excavation Fund.